



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 299-99

9 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the letter from the command where the nonjudicial punishment was imposed and the advisory opinions furnished by Headquarters Marine Corps. A copy of the command letter and the advisory opinions are enclosed.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection the Board substantially concurred with the comments contained in the advisory opinion.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

From: Lieutenant Colonel M. W. Walker 497 50 7073, USMC
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR NONJUDICIAL PUNISHMENT DOCUMENTATION IN THE
CASE OF [REDACTED]

Encl: (1) HQMC MSG of 021798
(2) YN1 Braly's statement
(3) Mr. Bowden's request for an exculpatory polygraph
(4) E-mail from Mr. Bowden to midshipmen
(5) Copy of excerpts from Mr. Bowden's health record
(6) Appeal of Nonjudicial Punishment
(7) DD 214

1. I have reviewed [REDACTED]'s contentious charges and find them to be salacious at best! When I arrived at NROTC, University of Missouri-Columbia in July of 1997, I was extremely impressed with [REDACTED]. He continued to impress me during the next six months. Then in January of 1998, Chief of Naval Education and Training (CNET) (Col [REDACTED]) phoned the CO and informed him that he had received information that [REDACTED] had engaged in sexual intercourse with [REDACTED]. It was later learned that [REDACTED], 9th Marine Corps District (a personal friend of [REDACTED]) had passed on this information to [REDACTED]. [REDACTED] was not that familiar with me and felt that if he apprised the CO ([REDACTED]) that it might not receive appropriate attention.

2. After an interview with [REDACTED], it was determined that there was a distinct possibility that the accusations were valid. I briefed the CO and he requested the assistance of NCIS. On 7 January 1998, Special Agent in Charge [REDACTED] interviewed [REDACTED]. SA [REDACTED] also felt that the accusations were true and indicated that a command inquiry should be conducted; however, NCIS could not open a criminal investigation because it was "consensual". As the record indicates an inquiry was done and [REDACTED] appeared before NJP; was found guilty and was subsequently denied reenlistment in spite of his "stellar record". The reason HQMC gave was "SNM's personal behavior has rendered him not eligible for further service. SNM's personal behavior is considered a serious core value violation" (enclosure (1)).

3. [REDACTED] alleges numerous irregularities regarding the NJP proceedings. [REDACTED] was the recorder and cannot substantiate [REDACTED]'s allegations (enclosure (2)). I will address [REDACTED] major areas of concern.

a. [REDACTED] was read his rights in front of [REDACTED] the day he returned off leave. He did not request to speak to a lawyer or to anyone external to the

staff. [REDACTED] was sent TAD to 9th Marine Corps District, Kansas City, MO. until all of the facts could be sorted out. The midshipmen returned that same day (13 January 1998). Having [REDACTED] in the area would have exacerbated the inquiry as he had very close relations with some of the students who would seek out his opinion prior to any interview. Additionally, [REDACTED] declined to make any statement then or during the inquiry. All of the Midshipmen were very cooperative and forthcoming with answers except [REDACTED]. Numerous statements made by midshipmen indicated that [REDACTED] was infatuated with [REDACTED].

- b. The NJP proceedings were conducted as per the MCM. [REDACTED] was afforded the opportunity to question witness, call anyone he chose to speak on his behalf or present evidence relevant to the charges. An example of the wide latitude given [REDACTED] during the NJP was past staff officers were telephonically used as witness on [REDACTED] behalf. The term "sexual predator" was used when describing [REDACTED]. Webster's II dictionary defines predator as to mean "A person who abuses or plunders others (females) for their own gain (gratification)." From the charges this term would be accurate in describing [REDACTED] at the time. In fact this was the underlying reason why [REDACTED] came forth. She stated that she [REDACTED] was afraid that the Gunny was doing the same thing to [REDACTED] that he had done to her, thus the term "sexual predator" ([REDACTED] statement).
- c. I told [REDACTED] during the rights warning that he could request an exculpatory polygraph and if he was "clean" the ball would be in [REDACTED] court and she could be charged with making false statements. He assured me that he was not guilty and the polygraph would not be necessary. However, he did request a polygraph just before the CO was to render his decision (enclosure (3)). A copy of the NCIS report is available through NCIS Headquarters, control # 26JAN98-MWSL-0015-8XMS/C. It is recommended that this report be reviewed as it has an in-depth interview with [REDACTED] and the results [REDACTED] exculpatory polygraph, as well as [REDACTED] conduct during his stay in Maryland. It should be noted that it was [REDACTED] decision and his decision alone to submit to a polygraph examination.
- d. [REDACTED] alleges that the CO used the polygraph as a tool in the Hogan case. I cannot comment on this case, as I was not in the command. Nor do I feel that [REDACTED] has all of the relevant information to address this incident.
- e. [REDACTED] knew when the NJP was scheduled and had indicated that he was going to have all of the midshipmen (78) testify at his NJP. This was impossible, as there would be 78 different school schedules to contend with and most of the midshipmen had no direct knowledge of the incident. I

provided a copy of the inquiry to him and informed [REDACTED] that he had to give me a list of relevant witness that he required to appear at NJP. I in turn had to contact them and arrange for their appearance at NJP.

- f. [REDACTED] was under the impression he could interrogate each witness behind closed doors prior to appearing at NJP. I called CNET legal [REDACTED] and was told that any questioning should be done in front of the CO. this would preclude intimidation. I passed this on to [REDACTED]. [REDACTED] alleges that he contacted students after his discharge regarding his NJP. He did e-mail some of the midshipmen and they requested guidance as to what to do. I told them they were free to reply. It was their decision (enclosure (4)). [REDACTED] NSHS Bethesda, MD, forwarded some of these e-mails. [REDACTED]'s interest in [REDACTED] came about because [REDACTED]'s entry into the Navy was questionable based on this NJP and a problematical DD 214. [REDACTED] can be reached at (301) 295 5565.
- g. The relationship of [REDACTED] to the midshipmen was very close. In fact it was too close. The old XO, [REDACTED], told me during the inquiry that he had counseled [REDACTED] on several occasions regarding his getting too close with female midshipmen, specifically [REDACTED]. He would go to their rooms (females only) and stay past 2200. During interviews he would inquire as to the sexual histories and practices of female midshipmen ([REDACTED] statement). Most of the freshmen worshiped the ground he walked on but as they advanced in the Battalion they realized he was more interested in his own needs than theirs.
- h. I was not here during [REDACTED]'s medical problems with a broken back. However, I have been told he was very mobile and only wore a back brace. He touched on this during NJP, but as his high state of mobility was recalled he dropped the subject. If it were such an incapacitating injury, as [REDACTED] so states, one would think that it would have been one of the corner stones of his defense during the NJP.
- g. [REDACTED] states that he has never had any kind of sexual disease (STD). Enclosure (5) is a certified copy of his health record and clearly shows that he received treatment on two occasions for Herpes. [REDACTED] did state to me he could not have had intercourse with [REDACTED] or she would be seeing a doctor. Based on this comment I consulted his medical record and discovered enclosure (5). [REDACTED] considers this matter so personal that she would say no more and requested that it not be discussed during NJP unless [REDACTED] broached the subject. [REDACTED] did not bring this issue up at the NJP.

h. During [REDACTED]'s stay in the hospital [REDACTED] requested that [REDACTED] not be in the room alone with his daughter. He knew that [REDACTED] was married and felt that their relationship was too close. This was conveyed to the CO by [REDACTED] and supported by Midshipman Henderson.

4. The CO prior to awarding punishment at NJP took [REDACTED]'s past superb record into account. Also, I feel sure that this was one of the reasons that he did not receive a court martial. [REDACTED] claims "foul play" with regard to the NJP. [REDACTED] is an extremely intelligent, savvy, street smart SNCO and could have, at any time, requested a court martial; however he chose not to. Additionally, did not have to take the polygraph, this was his choice. [REDACTED] appealed his punishment to CNET, which was upheld (enclosure (6)). [REDACTED] was ecstatic when he learned that he would get severance pay at discharge. He stated to me he could now get into the Navy dental scholarship program, with severance pay. At that time I just thought this was talk. During this entire process CNET legal was kept apprised.

5. It is unfortunate that the choices [REDACTED] made concerning his NJP and Marine Corps career were negative ones. His characterization of himself as an innocent maligned victim is as much a figment of his imagination as is the 18 pages of allegations. The truth is the [REDACTED] engaged in a pattern of fraternization, deceit, sexual intercourse, and dereliction of duty with female midshipmen of this unit. This deceptive SNCO failed to up hold the tenets of our Corps and not only let the Marine Corps down but all of the midshipmen that he had contact with. **This individual should never be allowed to work independently of direct supervision.** Enclosure (1) supports this statement as well as the reenlistment code of RE-4 (enclosure (7)).

6. If I can be of further assistance I can be reached at (573) 882 6675/93.

Very respectfully,

[REDACTED]



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070
JAM2
04 JUN 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF (FORMER) [REDACTED]
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request for removal from his official record of all entries related to the nonjudicial punishment (NJP) he received on 6 February 1998.

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background. On 6 February 1998, Petitioner was punished for dereliction of duty and violation of U.S. Navy Regulations based upon his inappropriate conduct with numerous female midshipmen while assigned as the Assistant Marine Officer Instructor (AMOI) at Naval Reserve Officer Training Corps Unit (NROTCU), University of Missouri. The charges included allegations that Petitioner, a married man, engaged in a long-term sexual relationship with one of the midshipmen. He was awarded a reprimand, 60 days restriction, and forfeiture of one half base pay per month for two months. He appealed, and that appeal was denied by the Chief of Naval Education and Training (CNET).

4. Analysis

a. The Report and Disposition of Offenses (NAVPERS 1626/7) that records the NJP is correct in form and suggests no irregularity in the proceeding itself. The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not suggest that the NJP authority abused his discretion.

b. Petitioner's complaints concerning the conduct of the proceedings are refuted by the letters from LtCol Walker, the NROTCU Executive Officer, and YN1 Braly, who was also present during the proceedings. Moreover, Petitioner was free to demand trial by court-martial at any time before punishment was actually imposed, and declined to do so. Finally, Petitioner was administered a polygraph at his request during a recess in the proceedings, and tested deceptive.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF (FORMER) [REDACTED]
[REDACTED] U.S. MARINE CORPS

c. We note also the absence of any apparent motive for either [REDACTED] or [REDACTED] to fabricate their allegations. [REDACTED] in particular, stood to gain nothing by coming forward with her revelations concerning the most serious instances of misconduct by Petitioner. Not only were these disclosures inherently embarrassing, but they also had the potential to adversely effect her pursuit of a commission. Finally, although [REDACTED]'s statement was clearly intended to be exculpatory, the facts disclosed still support a conclusion that Petitioner engaged in an unduly familiar relationship with her. Moreover, [REDACTED]'s statement that he saw Petitioner kissing [REDACTED] on the mouth suggests that the latter was less than forthcoming in her account of her relationship with Petitioner.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

M. W. Fisher, Jr.

M. W. FISHER, JR.
Head, Military Law Branch
Judge Advocate Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

--IN REPLY REFER TO:


1741
MMSR-6
26 Jul 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]

Ref: (a) MMER Route Sheet of 9May99, Docket No. 0299-99

1. The reference requests an advisory opinion on former [REDACTED] petition to correct his record with regard to his Non-Judicial Punishment awarded prior to his discharge, assigned reenlistment code, separation code, discharge date, and narrative reason for separation.
2. On 6 February 1998, former [REDACTED] was found guilty of dereliction of duty and violation of U.S. Navy Regulations due to inappropriate conduct with female midshipmen while assigned as the Assistant Marine Office Instructor at the Naval Reserve Officer Training Corps Unit, University of Missouri. Charges included allegations of a long-term sexual relationship with a female midshipman. His subsequent appeal was denied by the Chief of Naval Education and Training.
3. Former [REDACTED] was discharged under proper authority. No correction of his record is warranted. We, therefore, must regretfully recommend that his petition not be granted favorable consideration.


J. P. RATHBUN, JR.
Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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--IN REPLY REFER TO:

1500

MMEA

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF (FORMER) [REDACTED]
[REDACTED] U. S. MARINE CORPS

Ref: (a) MCO P1000.6 ACTS MANUAL

1. We are asked to provide a response to the Petitioner's request for reinstatement of the additional MOS 8511 Drill Instructor.
 2. We recommend that the requested reinstatement be denied for the following reason. In accordance with the reference, Commanders will void an additional MOS of a Marine for cause when the Marines special designation is revoked for unsatisfactory service or disciplinary action. Former [REDACTED] was charged with and found guilty of violating Article 92 , UCMJ, at Captain's Mast (NJP) on 6 Feb 98. Specifically, for two and a half years he engaged in a pattern of fraternization, sexual intercourse and dereliction of duty with female midshipmen. He was subsequently relieved for cause from AMOI duty and denied further service. SNM's personal behavior was not in keeping with the standards and values expected of a senior SNCO and as a result his additional MOS of 8511 was voided.
 3. Point of contact is [REDACTED], Head Special Assignments Unit, Manpower Management Enlisted Assignments, DSN 278-9263.
- [REDACTED]